No. 09-999

Supreme Court, U.S.
MAR 25 2010
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IN THE

Supreme Court of the United States

CLIFTON MALLERY a/k/a ENJAI OMAA EELE
and AMNAU KARAM EELE,

Petitioners,

—v.—

NBC UNIVERSAL, INC., NBC UNIVERSAL TELEVISION STUDIO,
TAIL WIND PRODUCTIONS, TIM KRING, DENNIS HAMMER,
ALLAN ARKUSH, JEPH LOEB and BRYAN FULLER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Second Circuit correctly affirmed the grant of summary judgment to defendants on the issue of substantial similarity, where the decision of the district court was based solely upon, and fully supported by, a careful comparison and analysis of the parties' respective works under the long-established standards for determining substantial similarity of protectable expression?

Whether the Second Circuit correctly affirmed the grant of summary judgment to defendants where the district court converted defendants' motion to dismiss into a motion for summary judgment without advance notice, in circumstances where it was evident that conversion might occur and where no prejudice resulted?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondents NBC Universal, Inc. and NBC Universal Television Studio make the following disclosure: NBC Universal, Inc. is owned (through intermediate entities) by General Electric Company and Vivendi Universal, S.A., both of which are publicly held corporations. No other publicly held company owns more than 10% of the stock of NBC Universal, Inc. NBC Universal Television Studio is a division of NBC Universal, Inc.

In addition to Respondents NBC Universal, Inc. and NBC Universal Television Studio, Petitioners also named Tail Wind Productions, and individuals Tim Kring, Dennis Hammer, Allan Arkush, Jeph Loeb and Bryan Fuller as defendants. None of these defendants were ever served.